PIRS-Dockets Branch
M.S. 1160
31030/EQU/4-2-3 Room 230

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Mr. George DuBois
10048 NE Campaign Street
Portland, OR 97220-3534

Dear Mr. DuBois:

This is in reply to your Petition for Reconsideration in ET Docket 93-1, received by the Commission on August 30, 1993.

Section 1.429(d) of the Commission's rules requires that petitions for reconsideration be filed within 30 days from the date of public notice of the action in question. The Report and Order in ET Docket 93-1 was published in the Federal Register on April 27, 1993 (58 FR 25574). I regret that we are unable to accept your petition because it was filed after the 30-day period.

Should you have any questions about this matter, please contact Dave Wilson of my staff at (202) 653-8138, or M.S. 1300-B4 at the address on the letterhead.

Sincerely,

Bruce Franca

for Thomas P. Stanley
Chief Engineer

cc: Chief Engineer
Julius Knapp
Robert Bromery
Richard Engelman
Art Wall
Dockets Branch (Please file in ET Docket 93-1, with copy of incoming)
DWilson:kls:September 28, 1993

Chief, TSB

Chief, AED

Petition for Reconsideration
ET Docket 93-1

In the matter of the Amendment of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations.

Petitioner: George DuBois

1. I respectfully request that the Commission reconsider their action in the Report and Order in E.T. Docket 93-1, specifically considering the points contained herein and those made in my earlier comments.
2. Although it is probably not the case, it appears that the comments of a number of us were not taken seriously. This observation is prompted by the fact that those of us with similar comments were labeled "scanner enthusiasts" (Report and Order, at 6), summarily grouped together (Order, at f.n. 10) and seemingly ignored. In my case, almost none of the issues I brought up were addressed in the Final Order. Hence the reason for this Petition for Reconsideration.

A. Authority for Implementation

3. In my comments I challenged the Commissions' authority to implement the proposal in Docket 93-1. I questioned whether such rules could be adopted under the Section 303 provisions of the Communications Act.
4. Other than the convoluted logic involved in reasoning that 303(r) requires the Commission to implement rules required by the Act which, of course, now contain a provision requiring them to implement these rules (!), I questioned whether the "public interest" requirements of the Communications Act could be cited.
5. The Commissions action is nothing less than indirect censorship. The cellular provisions of the TDDRA were passed to protect the interests of the few, parties who can and should provide for their own communications security if they desire privacy. The FCC is under no mandate to provide communications security for any radio service, common carrier or private.
6. Furthermore, the Commission has no business dictating what type of electronic equipment is manufactured by the private sector in this country or how to make it, other than what is in the public interest (interference protection, consumer safety, etc.)
7. If, say twenty years ago, Congress passed legislation requiring the Commission to use its Part 15 rules to prohibit the manufacture of radio receivers capable of receiving Radio Moscow, would the Commission have done so? Wouldn't the propriety of such an action have been questioned?
8. If the Commission fails to enact the provisions of the TDDRA (or repeals the Order on reconsideration) they wouldn't be the first federal agency that ignored a Congressional edict.

B. Equipment Authorization Process

9. My second, somewhat related, point was that the use of the equipment authorization process to enforce the provisions of P.L. 102-556 is an abuse of the Commissions authority. The equipment

authorization process does not exist as a means of telling manufacturers what types of equipment to make or what features it should have.
10. Its purpose is the control of interference from devices that are capable of radiating R.F. signals and/or causing interference. This fact is delineated in the Proposal and the Notice. In the NPRM, the Commission states that "to control their potential to cause harmful interference ... scanners receive an equipment authorization".
11. As I stated in my earlier comments, use of the Part 15 rules in this manner is a misapplication of these provisions. This is an abuse of authority.

C. Digital Conversion

12. Even if the Commission should fail to act in other areas, a subject definitely worthy of reconsideration is the ban on scanners capable of "converting digital cellular transmissions to analog voice audio". This provision, in its application, is unduly harsh and nothing less than punitive. The Commission has already banned, after next April, the manufacture of scanners capable of receiving the bands allocated to the Cellular Telecommunications Radio Service. Why, then, impose the ban on the reception of digital modulation techniques?
13. Frequency- and time-division multiplex techniques are even now being implemented in a number of services, most notably newer 800 MHz Specialized Mobile Radio Service systems. Reception of these services is perfectly legal (thus far, anyway!). Amateurs may experiment with these modes in the 900 MHz and higher bands. The Commissions action in dockets PR 92-235 and PR 93-144 will probably result in greatly increased use of such techniques.
14. The banning of the capability of receivers to detect such signals is arbitrary and punitive, in light of the obvious lack of a need for such a provision. The action is especially injurious given the desire for scanning receivers with such a capability for perfectly legitimate uses. Since coverage of the Cellular bands is already inhibited, it does nothing to further the Commissions objective in Docket 93-1.

D. Frequency Converters

15. The action affecting frequency converters is even more outrageous than the restrictions on receiver frequency coverage, when you consider that the Commission is under no Congressional mandate to restrict them.
16. As I (and others) mentioned in earlier comments, there is no practical way to delete coverage of certain bands with a block frequency converter. The Commissions' restrictions translate into an outright ban on frequency converters, which are otherwise perfectly legal and useful devices. To me, this would be the same as if, to ensure enforcement of the restrictions on private ownership of fully-automatic weapons, the Bureau of Alcohol, Tobacco and Firearms were to outlaw all bullets! Or perhaps if the Internal Revenue Service were to ban all writing instruments, since they can be used to cheat on tax returns!
17. I personally use a converter to monitor the 935 MHz band, periodically checking for new activity in the band. Rather than tie up an 800 MHz-capable scanner, it is much more practical to use a converter with an older, 450 MHz UHF scanner.
18. In the Order, the Commission delineates their reasoning for

banning frequency converters, declaring that by allowing the sale and use of converters they are permitting a scanner to be "readily alterable". (Order at 10.)
19. This judgment ignores the fact that the TDDRA and the new rules themselves explicitly define "readily alterable". The only mention of external devices refers to computer control of a scanner. The connection of external apparatus does not "alter" the scanner, by the Commissions' own definitions nor by any stretch of the imagination.
20. There is admittedly no doubt that many frequency converters could be used to receive cellular and other services when used with most scanners. They can also be thrown at someone, potentially causing serious injury! Should the Consumer Product Safety Administration ban them as hazardous? This is equally as outrageous.
21. Frequency converters are perfectly legal devices. The TDDRA does not call for their ban. Their potential uses are of no consequence to the Federal Communications Commission. The restriction should be repealed.

E. Summary

22. In summary, the banning of receivers capable of reception of specific frequency bands has never been done in this country and should not be done now. The Commission is under no obligation to ensure privacy for any type of radio service. The new rules are nothing less than censorship.
23. The prohibition on scanners capable of converting digital signals is unneeded and imposes a handicap on those desiring such a capability in a scanner for reception of transmissions in services other than Cellular Telephone.
24. The ban on frequency converters is especially outrageous in view of the fact that this provision was not even mandated by Congress and outlaws perfectly legal devices.
25. The restrictions on cellular-capable scanners is self-serving (being promoted by the Cellular interests), exceeds the Commissions' authority and should not have been passed. Other Executive agencies in the past have failed to enact legislation forced on them. The FCC should have done so in this case.

George DuBois
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